PHILIPPINES

In 1998, the U.S. trade deficit with the Philippines was $5.2 billion, an increase of $2.2 billion from the 1997 surplus of $3.0 billion. U.S. exports to the Philippines were $6.7 billion, a decrease of $691 million (9.3 percent) from 1997. The Philippines was the United States' 21st largest export market in 1998. U.S. imports from the Philippines were $11.9 billion in 1998, an increase of $1.5 billion (14.5 percent) from 1997. The most recent available statistics (1998) indicate the stock of U.S. foreign direct investment (FDI) in the Philippines was $3.4 billion.

The stock of U.S. foreign direct investment (FDI) in the Philippines in 1996 was $3.3 billion, an increase of 32.3 percent from the level of U.S. FDI in 1995. U.S. FDI in the Philippines is concentrated largely in the manufacturing and banking sectors.

IMPORT POLICIES

Tariffs

Under the Philippine Government's comprehensive tariff reform program, set out in Executive Orders (E.O.) 264 and 288, applied MFN tariff rates for all items except sensitive agricultural products are being gradually reduced to target rates of 3 percent for raw materials and 10 percent for finished products by January 2003, and to a uniform 5 percent tariff rate by January 2004. While the Philippines has indicated that it remains committed to these ultimate tariff levels, the Government in 1998 made extensive changes to the rate reduction schedule set out in E.O. 264 for the period 1998-2000.

In response to requests from import-sensitive industry sectors (including the petrochemicals, garment and apparel, rubber, steel, and forest product industries) the Philippines recalibrated the rate reduction schedule for a number of product categories in 1998. E.O. 465 and E.O. 486, which became effective on January 21, 1998 and July 7, 1998, respectively established new applied tariff rates for many items. Rates for some products will now be reduced more gradually. Applied duty rates were increased for some tariff headings, including garments, textiles, certain petrochemicals, ammunition, and unfinished automotive vehicles imported in kit form, but reduced rates on some other items of interest to U.S. exporters, including some agricultural products. For still other tariff lines, E.O. 465 and E.O. 486 retained 1997 duty rates in 1998, or postponed until 1999/2000 reductions in duties originally envisaged for 1998.

In September 1998, the new Administration of President Estrada agreed to consider requests by import-sensitive manufacturers for selected tariff increases, setting aside a policy of waiting at least 12 months following changes to rates before initiating any review of those new rates. The Philippine Tariff Commission held two sets of public hearings on private sector petitions urging the modification (generally to increase) duty rates. In January 1999, President Estrada signed E.O. 63, adjusting tariff rates on a range of products. The main changes of interest to U.S. companies include increases in the MFN applied tariff rates on yarns, threads, fabric, apparel, and kraft liner paper. Higher rates on these products were originally imposed in January 1998 by E.O. 465 for one year only; E.O. 63 extends these rates through 1999. Rates on these items are supposed to return to 1997 levels in the year 2000.

Imports of finished automotive vehicles (completely built-up units) are subject to a 40 percent tariff as an incentive to promote local assembly under the Philippines' Motor Vehicle Development Program. The duty rate on automotive vehicles is currently the highest duty rate applied to non-agricultural products, and is not scheduled to be reduced to 30 percent until the year 2000. As part of the Philippine Government's decision in 1997 to slow the pace of accelerated tariff reduction on certain items, and in some cases raise tariffs, E.O. 465 increases tariffs on completely-knocked down (CKD) automotive vehicle imports from 3 percent to 7 percent in 1998, and 10 percent in 1999.

Agriculture Tariffs and Import Licensing

The Philippines maintains high tariff rates on sensitive agricultural products, including grains, livestock and meat products, sugar, certain vegetables, and coffee. Examples include feed grains, particularly corn (at an in-quota rate of 35 percent, and an out-of-quota rate of 80 percent which is to be reduced to 65 percent effective July 1, 1999), sorghum (20 percent in quota , which is to be reduced to 15 percent effective July 1, 1999) and potatoes (in-quota rate of 45 percent, 80 percent out-of-quota rate which is to be reduced to 60 percent effective July 1, 1999).

Fifteen tariff lines of agricultural commodities (at the 4 digit HS level) are subject to minimum access volume (MAV) tariff-rate quotas (TRQs). Products covered by these TRQs include live animals, fresh and chilled beef, chilled pork, poultry meat, goat meat, potatoes, coffee, corn, and sugar. Administrative Order (A.O.) 9 of 1996, as amended by A.O. 8 of 1997 and A.O. 1 of 1998, established the rules by which these TRQs are implemented and import licenses are allocated. The United States had been concerned that the TRQs for pork and poultry meat were administered in a manner which allocated a vast majority of import licenses to domestic producers which had no interest in importing.

Due to the questionable WTO-consistency of the manner in which the Philippine TRQ system had been administered, the United States and other WTO members held formal consultations with the Philippines under WTO dispute settlement procedures in 1997. Following intensive consultations, the Governments of the United States and the Philippines concluded a Memorandum of Understanding (MOU) in February 1998 which resolved the United States' primary concerns over the Philippine TRQ system. The reforms embodied in the MOU are expected to shift gradually import licenses from licensees not utilizing their licenses to active importers and will be closely monitored by the United States. An initial review of MAV imports for 1998 shows little improvement, although this is largely attributable to the depreciation of the Philippine Peso since July 1997. An examination of the distribution of licenses reveals some progress in the administration of the TRQ system.

Excise Tax on Distilled Spirits

U.S. producers of distilled spirits have complained that current Philippine law has the effect of subjecting imported distilled spirits to a higher excise tax than that applied to domestic spirits. Distilled spirits produced from indigenously available materials (such as coconut palm, cane, and certain root crops) are subject to a specific tax of 8 pesos per proof liter. Distilled spirits produced from other raw materials (which would apply to most imports) are subject to a specific tax ranging from 75 pesos to 300 pesos per proof liter (depending on net retail price per 750 ml bottle). Still wines with an alcohol content of 14 percent or less by volume are assessed an excise tax of 12 pesos per liter while still wines with an alcohol content greater than 14 percent but less than 25 percent alcohol content by volume are charged an excise tax of 24 pesos per liter. Fortified wines (containing greater than 25 percent alcohol content) are taxed as distilled spirits. Depending on the net retail price per bottle, an excise tax of 100 pesos or 300 pesos per liter is assessed on sparkling wines.

Excise Tax on Automotive Vehicles

The Philippine Government's excise tax regime for automotive vehicles includes tiers based on engine displacement rather than vehicle value. This system serves to discriminate against imports of vehicles with larger engine displacement, which includes many U.S. exports. Current tax rates for motor vehicles with gasoline (non-diesel) engines are: 15 percent for engines up to 1600 cubic centimeters (cc); 35 percent for those with engines between 1601-2000cc; 50 percent for those between 2001-2700cc; and 100 percent for those 2701cc and above. For motor vehicles with diesel engines, excise rates are 15 percent for engines of up to 1800cc; 35 percent for those 1801-2300cc; 50 percent for those 2301-3000cc; and 100 percent for those 3001cc and above.

Quantitative Restrictions

The Philippines retains quantitative restrictions on rice. The rice quota is 68,645 metric tons for 1998, although the country is expected to import considerably more. Rice continues to be imported solely by the National Food Authority, although the Department of Agriculture is discussing the possibility of allowing the private sector to import some rice during 1999. The United States continues to urge the Philippines to consider eliminating the quantitative restriction on rice in the context of upcoming WTO agriculture negotiations.

Other Import Restrictions

Imports of used automotive vehicles and coal remain subject to government review and approval. Certain items, including firearms, ammunition, narcotics and other dangerous drugs, hazardous wastes, ozone depleting substances, and color photocopying equipment are subject to import regulation for public health, morality, and/or national security reasons. Executive Order 776, issued in 1982, has the effect of restricting imports by requiring that pharmaceutical firms purchase semi-synthetic antibiotics from a single local producer unless it is demonstrated that the landed cost of imported semi-synthetic antibiotics is at least 20 percent less than the cost of those produced locally. The United States has protested a June 3, 1998 Order from the Office of the President, which has the effect of prohibiting the importation and sale of certain cast-iron hubless pipe, until such time as certain regulations are amended to explicitly permit its use.

Customs Barriers

The Philippine Government retains the services of a private company to perform preshipment invoice inspection and valuation and customs clearance procedures of imports arriving in the Philippines. The contract between the Philippine Government and the private company for performance of inspection services, originally set to terminate in March 1998, has been extended through December 31, 1999.

As a policy matter, the United States has repeatedly expressed concerns that the Philippine Government put a strong focus on improving administration of its customs regime, rather than retain a private, for-profit company to carry out vital customs clearance and revenue collection functions ordinarily maintained by governmental authorities. Moreover, as a commercial matter, the United States has repeatedly reiterated to the Philippine Government that the actions of the private entity and its agents constitute import harassment. These abuses include failure to issue documents required by the WTO Agreement on Preshipment Inspection (PSI), arbitrary and unjustified increases or “uplifts” of the invoice value of imports, and demands for undocumented payments of “facilitation” fees which are not related to the cost of services rendered.

Many imports valued at more than $500 are permitted entry only when accompanied by a “Clean Report of Findings” (CRF) issued by the private entity at the point of export. However, U.S. exporters report that many of the basic procedural requirements under the WTO PSI Agreement related to transparent and efficient customs procedures are not consistently maintained, resulting in valuation and clearance problems when the goods arrive in the Philippines. Refrigerated products and most products destined for export-processing zones are exempt. Certain goods require mandatory preshipment inspection in the country of export. This preshipment inspection requirement extends to exports to certain operations in free-trade zones.

The appeal process for considering grievances by importers seeking to challenge decisions by the private entity lacks transparency and perpetuates an unacceptable and inappropriate conflict of interest, as representatives of the private entity sit on the appellate board deciding the complaints filed against its own conduct. Moreover, the appeals process, while available, is time consuming and requires that the exporting company or importer pay the uplifted valuation to obtain release of the shipment in question, or have it impounded pending the outcome of the appeal, with storage costs to be borne by the exporter or importer.

The Philippines has used provisions allowing developing countries to delay implementation of obligations under the WTO Agreement on Customs Valuation, including use of the "transaction value" method of customs valuation. Republic Act (R.A.) 8181, which abolished use of "home consumption value," authorized a shift to the use of the WTO-mandated “transaction value” methodology no later than December 31, 1999. However, it adopted the use of "export value" (also known as the "Brussels definition of value") as an interim measure until such time as transaction value is implemented.

In valuation and other areas, a 1997 memorandum of understanding between the Bureau of Customs and two Philippine industry associations creates formal channels for local private industry, including firms which produce goods that compete with imports, to influence valuation and other customs clearance procedures. Regulations issued in October 1998 further institutionalized the ability of local firms to seek upward adjustments in customs valuation of imported products.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Industrial Goods

Local inspection for standards compliance is required for a range of industrial and consumer products, including cosmetics, medical equipment, lighting fixtures, electrical wires and cables, cement, pneumatic tires, sanitary wares, and household appliances. For other goods, U.S. manufacturers’ self-certification of conformance is accepted. Labeling is mandatory for textile fabrics, ready-made garments, household and institutional linens, and garment accessories. Mislabeling, misrepresentation, or misbranding may subject the entire shipment to seizure and disposal. The “Generic Act” of 1988 aims to promote the use of generic drugs by requiring that the generic name of a particular pharmaceutical must appear above its brand name on all packaging.

Agricultural Goods

The Philippine Department of Agriculture has established plant health regulations which allow the import of U.S. apples, grapes, oranges, potatoes, onions, and garlic, provided these products do not originate from Florida or Texas. Protocols are being negotiated for a range of other fruits and vegetables, including Florida citrus, cherries, broccoli, lettuce, and cauliflower. Additional produce items can be negotiated as the need arises.

Further, the Philippine Government's zero tolerance policy for methanol in wine products has posed a concern for exporting alcohol industries. This policy requires that a manufacturer's report on the manufacturing process be submitted to the Philippine Bureau of Food and Drug (BFAD) for evaluation.

GOVERNMENT PROCUREMENT

Contracts for government procurement are awarded by competitive bidding which, in general, do not discriminate against foreign bidders. However, preferential treatment of local suppliers is practiced in government purchases of pharmaceuticals, rice, corn, and iron/steel materials for use in government projects. Contractors for infrastructure projects that require a public utility franchise (i.e., water and power distribution, telecommunications, and transport systems) must be at least 60 percent Filipino-owned. For other major contracts (such as build-operate-transfer projects) not involving a public utility franchise, a foreign contractor must be duly accredited by its government to undertake construction work. The Philippines is not a signatory of the WTO Government Procurement Agreement (GPA).

Executive Order 120, dated August 19, 1993, mandates a countertrade requirement for procurements by government agencies and government-owned or controlled corporations that entail the payment of at least U.S. $1 million in foreign currency. Implementing regulations issued by the Department of Trade and Industry set the level of countertrade obligations of the foreign supplier at a minimum of 50 percent of the import price, and provide for penalties for non-performance of countertrade obligations. The implementing agency for countertrade transactions is the Philippine International Trading Corporation.

EXPORT SUBSIDIES

Enterprises (including exporters) engaged in activities under the Government's "Investment Priorities Plan" may register with the Board of Investments (BOI) for fiscal incentives, including four to six year income tax holidays; a tax deduction equivalent to 50 percent of the wages of direct-hire workers; and tax and duty exemptions for the importation of breeding stocks and genetic materials. BOI-registered firms that locate in less-developed areas may be eligible to claim a tax deduction of up to 100 percent of outlays for infrastructure works and 100 percent of incremental labor expenses. Firms in government-designated export processing zones, free trade zones, and other special industrial estates registered with the Philippine Economic Zone Authority (PEZA) enjoy basically these same incentives, plus tax and duty-free importation of capital equipment and raw materials, and exemption from preshipment inspection. In lieu of national and local taxes, PEZA-registered firms are subject to a 5 percent tax on gross income.

Firms which earn at least 50 percent of their income from exports may register with BOI or PEZA for certain tax credits under the Export Development Act, including a tax credit for imports of raw material or components not readily available locally (through December 31, 1999) and a tax credit on incremental annual export revenue.

LACK OF INTELLECTUAL PROPERTY PROTECTION

While substantial progress has been made in recent years, significant problems remain in ensuring the consistent and effective protection of intellectual property rights (IPR). A new intellectual property code (R.A. 8293) was signed into law on June 6, 1997, and took effect January 1, 1998, improving the legal framework for IPR protection in the Philippines. R.A. 8293 provides enhanced copyright and trademark protection, and creates a new Intellectual Property Office (IPO), with specific authority to resolve certain disputes concerning licensing; significantly increases penalties for infringement and counterfeiting; and relaxes provisions requiring the registration of licensing agreements. Passage of the law was called for under a 1993 bilateral U.S.-Philippine agreement to strengthen protection of intellectual property rights in the Philippines.

Defects in R.A. 8293 remain a source of serious concern. These included, *inter alia*, a provision permitting the decompilation of software programs as "fair-use," subject to certain restrictions; the lack of clear provisions for ex-parte relief; ambiguous provisions that fail to provide clearly an exclusive right for copyright owners over broadcast, rebroadcast, cable retransmission, or satellite retransmission of their works; and onerous restrictions affecting contracts to license software and other technology. Some provisions of R.A. 8293, while nominally in force, are currently unavailable to rights holders, because of organizational delays at the IPO. These include the right to pursue cases against IPR violators using the IPO's administrative complaint provisions.

Despite the creation in February 1993 of the Presidential Interagency Committee on Intellectual Property Rights (PIAC-IPR) to coordinate enforcement oversight and program implementation, serious problems continue to hamper the effective operation of agencies tasked with IPR enforcement. Resource constraints, already a problem, have been exacerbated by general governmental budgetary shortfalls, but joint efforts between the private sector and the National Bureau of Investigation (NBI) have resulted in some successful enforcement actions. The VRB has also undertaken increased enforcement efforts. Judicial unwillingness to impose meaningful penalties and sentences remains a stumbling block to more aggressive use of the courts to deter effectively IPR violations. The designation of 48 courts to handle IPR violations has done little to streamline the judicial proceedings in this area, as these courts have not received additional resources and continue to handle a heavy non-IPR workload. Because of the lengthy nature of court action, many cases are settled out of court. The Philippines remains on the Special 301 Watch List.

The Philippine Government is a party to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty; it is also a member of the World Intellectual Property Organization, although it has not yet signed the WIPO treaties on copyright and performance rights/phonograms. The Philippines is a member of the World Trade Organization, but has utilized the transition period available to developing countries to delay implementation of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPs) until January 1, 2000.

Patents

R.A. 8293 moves the Philippines to a first-to-file system, increases the term of patents from 17 to 20 years, and provides for the patent ability of micro-organisms and non-biological and microbiological processes. The holder of a patent is guaranteed an additional right of exclusive importation of his invention. A compulsory license may be granted in some circumstances, including if the patented invention is not being worked in the Philippines without satisfactory reason, although importation of the patented article constitutes working or using the patent. Legislation is pending to provide sui-generis IPR protection to plant varieties and to provide IPR protection to layout-designs of integrated circuits.

Trademarks

R.A. 8293 no longer requires prior use of trademarks in the Philippines as a requirement for filing a trademark application. The law also eliminates the requirement that well-known marks be in actual use in Philippine commerce or registered with the Government. Trademark counterfeiting remains widespread in the Philippines.

Copyright

R.A. 9293 expands IPR protection by clarifying protection of computer software as a literary work (although it includes a fair-use provision on decompilation of software), establishing exclusive rental rights in several categories of works and sound recordings, and providing terms of protection for sound recordings, audiovisual works, and newspapers and periodicals that are compatible with the WTO TRIPs Agreement. However, as noted above, significant gaps remain, including the fair-use provision on software decompilation; a lack of clear provisions for ex-parte relief; and ambiguities concerning exclusive rights for copyright owners over broadcast and retransmission. Ratification by the Philippines of the Berne Convention (Paris Act) in June 1997 effectively ended the longstanding government practice of authorizing local publishers to reprint foreign textbooks without permission of the foreign copyright holder.

Software piracy remains widespread. The Philippine Government has committed to eliminate the use of pirated software within government agencies, pursuant to Memorandum Circular 115, which orders government agencies to use only licensed, legitimate software. Software vendors believe compliance, though improved, remains uneven.

Despite positive, intensified cooperation with the government's Videogram Regulatory Board and actions by the NBI, U.S. distributors report a continued high level of unauthorized retail sale and distribution of audio and visual material and unauthorized transmissions of motion pictures and other programming on cable systems. Most digital media appear to be imported, although enforcement agents have raided some small-scale illegal reproduction operations. Philippine courts have been reluctant to impose substantial penalties, which serve as a deterrent for infringement; often, penalties consist only of the seizure and confiscation of the video cassettes or optical discs used in the unauthorized cable broadcast. Delays in the issuance of warrants are a problem. Arrests are infrequent. It remains to be seen whether the tougher penalties contained in R.A. 8293 will enhance enforcement. Legislation to expand the VRB's enforcement powers and increase penalties was reintroduced in 1998 and is pending before the Philippine Congress. The U.S. motion picture industry estimates annual losses due to audiovisual piracy in the Philippines amounted to $18 million in 1997.

Licensing of Technology

The Intellectual Property Office requires that all technology transfer arrangements (defined as contracts involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a service including management contracts, and the transfer, assignment or licensing of all forms of intellectual property rights, including computer software except for software developed for mass market) comply with provisions outlined in R.A. 8293, including the prohibition of the use of certain clauses in

such arrangements. The scope of these provisions is extremely broad and
serves to obstruct the normal contracting process between unrelated parties or as part of intra-company business.

SERVICES BARRIERS

Basic Telecommunications

The Philippine Constitution (Section 11 of Article XII) limits foreign ownership of telecommunications firms to 40 percent. During the WTO negotiations on basic telecommunications services, the Philippines made commitments on most basic telecommunications services and adopted some pro-competitive regulatory principles. The Philippines did not provide market access or national treatment for satellite services, and made no commitment regarding resale of leased circuits/closed user groups. However, the Philippines is long overdue in providing to the World Trade Organization an acceptance of the Fourth Protocol to the General Agreement on Trade in Services, which is necessary to bring its commitments on basic telecommunications services into effect.

Insurance

Although current practice permits up to 100 percent foreign ownership in the insurance sector, the Philippines only committed to a WTO binding at a maximum level of equity participation at 51 percent. However, it grandfathered the status of existing insurers with more than 51 percent foreign equity. As a general rule, only the state-owned government service insurance system may provide coverage for government-funded projects. A 1994 administrative order extended this policy to Build-Operate-Transfer (BOT) projects. Private insurance firms, both domestic and foreign, regard this as an important trade barrier. Current regulations require all insurance/professional reinsurance companies operating in the Philippines to cede to the industry-owned National Reinsurance Corporation of the Philippines (NRCP) at least 10 percent of outward reinsurance placements.

Banking

May 1994 legislation permitted 10 foreign banks to open full-service branches in the Philippines. A foreign entry bank may also own up to 60 percent of a new or existing local subsidiary, although the Philippines only bound foreign ownership at 51 percent in its WTO financial services offer. Foreign branch banks are limited to six branches each. Four foreign-owned banks that had been operating in the Philippines before 1948 were each allowed to open up to six additional branches. Current regulations also provide that majority Filipino-owned domestic banks should, at all times, control at least 70 percent of total banking system assets. The revised banking law now allows a foreign branch bank to obtain a "universal banking" license which was previously limited to Philippine-controlled commercial banks. This will allow a foreign branch bank to engage in the activities of an investment house (primarily securities underwriting for the domestic market), in addition to regular commercial banking functions.

Securities and Other Financial Services

Membership in the Philippine Stock Exchange (PSE) is open to foreign-controlled stock brokerages that are incorporated under Philippine laws. Foreign equity in mutual fund and trust management firms is limited to

40 percent, and in securities underwriting companies to 60 percent. Securities underwriting companies not established under Philippine law may underwrite Philippine issues for foreign markets, but not for the domestic market. Although there are no foreign ownership restrictions governing acquisition of shares of mutual funds, current law restricts membership in the board of directors to Philippine citizens. The Philippines took an MFN exemption on foreign equity participation in securities firms, stating that Philippine regulators would approve applications for foreign equity only if Philippine companies enjoy similar rights in the foreign investor's country of origin.

Advertising

The Philippine Constitution (Section 11 of Article XVI) limits foreign ownership of advertising agencies to 30 percent. All executive and managing officers of advertising agencies must be Philippine citizens.

Public Utilities

The Philippine Constitution (Section 11 of Article XII) specifically limits the operation of public utilities (i.e., water and sewage, electricity, telecommunications) to firms with at least 60 percent ownership by Philippine citizens. All executive and managing officers of such enterprises must be Philippine citizens.

Practice of Professions

As a general rule, the Philippine Constitution (Section 14 of Article XII) reserves the practice of licensed professions (e.g., law, medicine, nursing, accountancy, engineering, architecture, customs brokerage, etc.) to Philippine citizens. Philippine law (R.A. 8182) also required that preference be given to Philippine citizens in the hiring of consultants and other professionals necessary for the implementation of projects funded by foreign assistance. Legislation signed in February 1998 (R.A. 8555) gives the President of the Philippines the authority to waive this and other preferences applicable to the procurement of goods and services funded by foreign assistance.

Shipping

The Maritime Industry Authority prohibits foreign flagged vessels from the carriage of domestic trade.

Express Delivery Services

Foreign air express couriers and airfreight forwarding firms must either contract with a wholly-owned Philippine business to provide delivery services, or establish a domestic company at least 60 percent of which should be Philippine-owned.

INVESTMENT BARRIERS

The 1991 Foreign Investment Act (FIA) contains two "negative lists" that outline areas where foreign investment is restricted. The restrictions stem from a Constitutional provision, Section 10 of Article VII, which permits the Philippine Congress to reserve to Philippine citizens certain areas of investment. The scope of these lists were updated by E.O. 11, signed August 11, 1998.

"List A" covers activities in which foreign equity is excluded or limited by the Constitution or other laws. No foreign investment is permitted in mass media (including cable television operators), retail trade, processing of corn and rice, small-scale mining, and private security agencies. In addition to land ownership (where a 40 percent foreign equity ceiling applies), foreign ownership limitations cover advertising (30 percent), recruitment (25 percent), financing (60 percent), securities underwriting firms (60 percent), public utilities (40 percent), education (40 percent), the operation of deep sea commercial fishing vessels (40 percent), public works (25 percent, except for projects registered with the Board of Investments and that are foreign-funded, where 100% foreign equity is permitted), and the exploration and development of natural resources (40 percent). Effective October 24, 1998, the Government eliminated private domestic construction activity from the foreign investment "negative" list, thereby lifting the 40 percent foreign ownership ceiling previously imposed on this activity. "List B" limits foreign ownership (generally to 40%) for reasons of public health, safety, morals, or national security.

The FIA also requires a minimum paid-in capital of U.S. $200,000 for an enterprise to be more than 40 percent foreign-owned. The Philippines generally imposes a foreign ownership ceiling of 40 percent on firms seeking incentives with the Board of Investments (BOI) under the annual investment priorities plan. While there are exceptions to the ceiling, divestment to reach the 40 percent level is required within 30 years or longer as allowed by the BOI. As a general policy, the Philippine Department of Labor and Employment allows the employment of foreigners provided there are no qualified Philippine citizens that can fill the position. However, the employer must train Filipino understudies and report on such training periodically. Employees of foreign-owned firms registered with the BOI may retain the positions of president, treasurer, and general manager, or their equivalents.

Trade-Related Investment Measures

The Philippines has availed itself of an allowance under the WTO Agreement on Trade-Related Investment Measures (TRIMs) to maintain certain measures which are otherwise inconsistent with obligations under the TRIMs Agreement. The Board of Investments imposes industry-wide local content requirements under its Motor Vehicle Development Program, and requires participants to generate, via exports, a certain percentage of the foreign exchange needed for import requirements. Regulations governing the provision of tax incentives impose a higher export performance for foreign-owned enterprises (70 percent of production should be exported) than for Philippine-owned companies (50 percent). In addition, there appear to be unwritten "trade balancing" requirements for firms applying for approval of ventures under the ASEAN Industrial Cooperation (AICO) scheme. WTO obligations require that the Philippines eliminate all these measures by January 1, 2000.

ELECTRONIC COMMERCE

Electronic transactions are not presently subject to any discriminatory trade restrictions or tax measures. At present, electronic documents do not have legal recognition in the Philippines. Legislation is pending in the Philippine Congress to give electronic documents legal standing.

OTHER BARRIERS

The Revised Penal Code, Anti-Graft and Corrupt Practices Act, and Code of Ethical Conduct for public officials are in place and are intended to combat suspected corruption and related anti-competitive business practices. The Office of the Ombudsman investigates cases of alleged graft and corruption involving public officials. The “Sandiganbayan” (anti-graft court) prosecutes and adjudicates cases filed by the Ombudsman.

In spite of these government mechanisms directed at combating suspected corruption, widespread anecdotal evidence suggests that graft remains a problem at many levels in all branches of the Philippine Government. In its 1998 survey of public perceptions of corruption in 85 countries, the non-governmental organization ranked the Philippines tied at sixteenth place in terms of the perceived level of corruption. The U.S. Embassy and the American Chamber of Commerce in Manila have in the past successfully represented U.S. business interests in cases where U.S. firms seemed disadvantaged because of reportedly questionable bid/award or other government proceedings.